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May 7, 2004

To: Community Based Alternatives (CBA) and Community Care for the Aged and Disabled (CCAD) Special Services to Persons with Disabilities Providers

Subject: Long Term Care (LTC)
Information Letter No. 04-18
Repeal of Chapter 48, Subchapter L, Minimum Standards for Agencies Contracted to Provide Special Services to Persons with Disabilities, and Adoption of Chapter 58, Contracting to Provide Special Services to Persons with Disabilities, **Effective April 1, 2004**

Effective April 1, 2004, the Texas Department of Human Services (DHS) repealed the provider agency rules for the Community Care for the Aged and Disabled (CCAD) Special Services to Persons with Disabilities (SSPD) program, which were found in 40 Texas Administrative Code (TAC), Chapter 48, Subchapter L. The provider agency rules for the SSPD program were re-adopted in 40 TAC Chapter 58, Contracting to Provide Special Services to Persons with Disabilities.

The rules have been re-written in a clear, easy-to-read format. This style is known as plain English, question and answer format. These rules contain minor terminology changes to make them more consistent with other CCAD rules.

A copy of these rules is attached to this letter. You may also access these rules through the Secretary of State's TAC Viewer at <http://www.sos.state.tx.us/tac/index.shtml>, or through the Community Care Website at <http://www.dhs.state.tx.us/programs/communitycare/rules/index.html>.

Please contact your contract manager if you have questions regarding this letter. Contract managers should contact Janice Wallace at (512) 438-2188.

Sincerely,

Signature on file

Marilyn Eaton
Director
Long Term Care Services

ME:ck

Attachment

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Subchapter A, Introduction

§58.1. What is the purpose of this chapter? This chapter establishes the requirements for provider agencies contracting to provide services to eligible clients through the Texas Department of Human Services (DHS) Special Services to Persons with Disabilities (SSPD) Program.

§58.3. What do certain words and terms in this chapter mean? The following words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

- (1) 24-Hour Shared Attendant Care--A clustered living arrangement that has attendant care available to clients on a 24-hour basis.
- (2) Adult day care facility--A facility licensed by the Texas Department of Human Services (DHS) Long Term Care Regulatory (LTCR) under the Human Resources Code, Chapter 103.
- (3) Attendant Care--Non-skilled services provided by an unlicensed person, which include personal care, housekeeping, supervision, meal preparation, and escort.
- (4) Client--A client, as defined in Chapter 48 of this title (relating to Community Care for Aged and Disabled), who is eligible to receive services under this chapter.
- (5) Community Care for Aged and Disabled (CCAD)--A group of DHS programs that provides a variety of state-funded and Title XIX-funded community-based services.
- (6) Contract--The formal, written agreement between DHS and a provider agency to provide services to DHS clients eligible under this chapter in exchange for reimbursement.
- (7) Contract manager--A DHS employee who is responsible for the overall management of the contract with the provider agency.
- (8) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.
- (9) DHS--The Texas Department of Human Services.
- (10) Director--The provider agency employee who is responsible for the day-to-day operation of the agency.
- (11) Provider agency--An entity that contracts with DHS to provide Special Services to Persons with Disabilities (SSPD) services. Any reference to provider agency means the following, unless otherwise specified in the text:
 - (A) a home and community support services agency licensed by DHS LTCR under the Health and Safety Code, Chapter 142;
 - (B) an adult day care facility; or
 - (C) any other legal entity described in the procedures developed in the DHS region where SSPD services are provided.
- (12) Special Services to Persons with Disabilities (SSPD)--A program for CCAD clients that is designed to assist clients in:
 - (A) developing the skills needed to remain in the community as independently as possible; and
 - (B) achieve habilitative or re-habilitative goals.
- (13) Staff--A provider agency employee or volunteer who provides direct care services to a client.

Subchapter B, Provider Agency Contracts

§58.11. What general contract requirements must the provider agency follow? The provider agency must:

- (1) meet all provisions described in Chapter 49 of this title (relating to Contracting for Community Care Services);
- (2) deliver services under the appropriate license for the setting in which the provider agency will deliver SSPD services; and
- (3) comply with the plan of operation, which is incorporated in the contract by reference.

§58.13. What are the settings in which the provider agency may deliver services? The provider agency may deliver services in the following settings:

- (1) (1) 24-Hour Shared Attendant Care;
- (2) an adult day care facility; or
- (3) other settings approved by the contract manager.

§58.15. How is written information sent to DHS? Any written information that DHS requires the provider agency to send to DHS must be sent by mail, fax, or hand-delivery. DHS does not accept e-mail delivery.

Subchapter C, Plan of Operation

§58.21. Must the provider agency develop a plan of operation? Yes. The provider agency must develop a plan of operation.

§58.23. What must the provider agency's plan of operation include? The provider agency's plan of operation must:

- (1) identify the services and tasks the provider agency provides under the contract;
- (2) state the hours of operation and the setting in which the services are provided;
- (3) specify the number and types of staff delivering the services;
- (4) state the qualifications and competencies of staff. The plan of operation must state how the provider agency will ensure that staff receive initial and ongoing training as described in Subchapter D of this chapter (relating to Staff Development);
- (5) describe the methods and procedures for determining client eligibility, if this is required by the procedures developed in the DHS region where services are delivered;
- (6) describe the services provided to eligible clients. The provider agency must offer the services required by the procedures developed in the DHS region where services are delivered;
- (7) describe the methods and procedures for providing services to clients; and
- (8) state the method for documenting the services that are delivered.

§58.25. Who approves the provider agency's plan of operation? The contract manager approves the provider agency's plan of operation.

§58.27. How must the provider agency request approval of the plan of operation? The provider agency must make a written request for approval of the plan of operation.

§58.29. When must the provider agency request approval of the plan of operation? The provider agency must request approval of the plan of operation:

- (1) to allow the approval to coincide with the effective date of the contract; and
- (2) before implementing a change made to an ongoing plan of operation.

§58.31. When must the provider agency notify the contract manager of a change made to the plan of operation? The provider agency must notify the contract manager no later than 30 days before the effective date of change desired by the provider agency.

§58.33. How must the provider agency notify the contract manager of a change to the plan of operation? The provider agency must provide written notice to the contract manager.

§58.35. How will the provider agency know that a change to the plan of operation has been approved? The contract manager will provide written notice of approval or disapproval.

§58.37. When must the provider agency implement a change to the plan of operation? The provider agency must implement a change to the plan of operation on the date the provider agency requests to implement the change in the plan of operation. This date cannot be before the date the contract manager provides written approval of the change.

Subchapter D, Staff Development

§58.41. What are the provider agency's responsibilities for staff development? The provider agency must:

- (1) maintain a written plan for developing and enhancing the performance of staff responsible for providing the SSPD services; and
- (2) ensure that staff are trained and competent to provide services to clients according to the service plan.

§58.43. What must the provider agency's written plan for staff development include? The provider agency's written plan for staff development must include the:

- (1) schedule for training, including the length of time;
- (2) curriculum, including specific topics;
- (3) training objectives;
- (4) method of training; and
- (5) names of the instructors.

§58.45. What initial training must the provider agency give staff? The provider agency must give all staff the following training during the first three months of employment:

- (1) three hours of training on the following topics:
 - (A) orientation to community resources;
 - (B) the provider agency's policies and procedures;
 - (C) 29 United States Code §794 (relating to Nondiscrimination under Federal grants and programs); and
 - (D) confidentiality of records; and
- (2) 21 hours of training on the following topics, which may be on-the-job training under the supervision of tenured staff and must include:
 - (A) techniques of working with persons with disabilities to assist them in living as independently as possible; and
 - (B) knowledge of the individual clients' conditions.

§58.47. Which training requirements may be waived? The contract manager may waive the additional 21 hours of training.

§58.49. How must the provider agency request a waiver for the additional 21 hours of training? The provider agency must make a written request for a waiver from the contract manager.

§58.51. When must the provider agency request a waiver for the additional 21 hours of training? The provider agency must request the waiver at least 30 days before a staff member requiring a waiver provides any services.

§58.53. How will the provider agency know if the waiver request is approved? The contract manager will send a written notice of approval or disapproval to the provider agency.

§58.55. Can a staff member who requires a waiver provide any services before approval of the waiver? No.

§58.57. What information must the provider agency include in the request for a waiver? The provider agency must include the following information for each staff member for whom it requests a waiver:

- (1) name;
- (2) job title;
- (3) specific education or experience that qualifies the staff member for the waiver;
and
- (4) a statement that he or she is competent in providing services.

§58.59. What ongoing training must the provider agency give staff? The provider agency must give direct care staff at least two hours of ongoing training every three months, after the first three months of employment.

§58.61. What must the provider agency include in the ongoing training? The provider agency must include in-service training related to the direct services provided by staff in the ongoing training.

Subchapter E, Service Delivery

§58.71. What services must the provider agency deliver? The provider agency must deliver services identified in:

- (1) the client's service plan; and
- (2) the provider agency's plan of operation.

§58.73. What is the client's service plan? The client's service plan is a document that contains the services, tasks, and frequency of services a particular client will receive. These services must be part of the provider agency's service array outline in the plan of operation.

§58.75. Who must develop the service plan? The provider agency must develop the service plan.

§58.77. When must the provider agency develop the service plan? The provider agency must develop the service plan before services are initiated.

§58.79. When must the provider agency initiate services? The provider agency must initiate services:

- (1) within 14 days after the referral date (Item 1) on the DHS Authorization for Community Care Services form; or
- (2) as required by the procedures developed in the DHS region where services are delivered.

Subchapter F, Emergencies

§58.91. What is considered an emergency?

- (a) An emergency is an unforeseen circumstance or combination of circumstances involving a client that:
 - (1) requires immediate action on the part of the provider agency; or
 - (2) results in a client's urgent need for assistance or relief.
- (b) Emergencies are described in more detail in the procedures developed in the DHS region where services are delivered.

§58.93. Who must the provider agency notify of emergencies? The provider agency must report any emergencies to:

- (1) the contract manager; and
- (2) any other persons or entities required by the procedures developed in the DHS region where services are delivered.

§58.95. When must the provider agency notify the required persons of emergencies? The provider agency must notify the required persons by the next working day after the emergency. A working day is a day DHS is open for business.

§58.97. How must the provider agency notify the required persons of emergencies?

- (a) The provider agency must notify the required persons of emergencies orally or by fax.
 - (1) Voice mail is not considered oral notification.
 - (2) The provider agency must notify other staff designated by the contract manager if the contract manager is not available.
- (b) If the provider agency's first notification is oral, the provider agency must send written notification to the required persons by the seventh day after the initial notification.

§58.99. What information must the provider agency give to the required persons in the notice of emergencies? The provider agency must give the following information to the required persons in the notice of emergencies:

- (1) the date of the emergency;
- (2) a description of the emergency;
- (3) how the emergency was handled; and
- (4) the outcome or resolution of the emergency.

§58.101. Where must the provider agency maintain documentation of emergencies? The provider agency must maintain documentation of emergencies in the client file.

§58.103. What documentation of emergencies must the provider agency maintain? The provider agency must maintain the following documentation of emergencies:

- (1) the type of the emergency;
- (2) the name of the person or entity or both notified of the emergency;
- (3) the date the notice was given;
- (4) the method of notice; and
- (5) the information described in §58.99 of this chapter (relating to What information must the provider agency give to the required persons in the notice of emergencies?).

Subchapter G, Additional Requirements for 24-Hour Shared Attendant Care

§58.111. What are the additional requirements for provider agencies delivering services in a 24-Hour Shared Attendant Care setting? The provider agency must:

- (1) be licensed by DHS as a home and community support services agency as described in Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);
- (2) deliver services in the SSPD Program under the Personal Assistance Services or Licensed Home Health categories of licensure;
- (3) arrange for each residence to have a telephone or an emergency response device for requesting assistance in emergency situations and for requesting assistance with activities of daily living;
- (4) have a written emergency assistance and evacuation plan for each residence. The local fire marshal must approve the evacuation plan;
- (5) train all clients in the emergency procedures and evacuation plan within three days from the date of service initiation. The provider agency must document in each client file that the client received the training;
- (6) ensure that at least one employee, certified in the following courses, is on the premises during the hours services are provided:
 - (A) United States Department of Labor, Occupational Health and Safety Administration (OSHA) or equivalent first aid and personal safety; and
 - (B) basic life-support and cardiopulmonary resuscitation; and
- (7) ensure that there are current physician's orders in accordance with applicable law if the attendant(s) provides delegated medical or nursing tasks. The provider agency must maintain a copy of all physician's orders in the client file.

§58.113. What are the additional initial training requirements for provider agencies delivering services in a 24-Hour Shared Attendant Care setting? In addition to the requirements described in §58.45 of this chapter (relating to What initial training must the provider agency give staff?), the 24-Hour Shared Attendant Care provider agency must train staff on the following within three days of employment:

- (1) fire, health, and safety laws; and
- (2) the provider agency's plan for emergency evacuation.

§58.115. Which tasks in 24-Hour Shared Attendant Care require physician's orders? The provider agency must obtain physician's orders on tasks as required by the provider agency's license.

Subchapter H, Additional Requirements for Services Provided in an Adult Day Care Facility

§58.121. What are the additional requirements for provider agencies delivering services in an adult day care facility setting? The provider agency must:

- (1) be licensed by DHS as an adult day care facility as described in Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements);
- (2) ensure the director or the director's designee is at the facility during the hours of operation and when clients are present;
- (3) train clients in emergency procedures and the evacuation plan within three calendar days from the date of service initiation;
- (4) post a monthly schedule of program activities in plain view at least one week in advance of the effective date of the schedule; and
- (5) have enough materials for all clients to participate in program activities.

§58.123. What are the additional initial training requirements for provider agencies delivering services in an adult day care facility setting? In addition to the requirements described in §58.45 of this chapter (relating to What initial training must the provider agency give staff?), the adult day care provider agency must train staff on the following within three days of employment:

- (1) fire, health, and safety laws; and
- (2) the provider agency's plan for emergency evacuation.

Subchapter I, Claims Payment and Documentation Requirements

§58.131. What are the recordkeeping requirements for the SSPD Program? The provider agency must comply with the following requirements for recordkeeping:

- (1) Maintain all records according to:
 - (A) Chapter 49 of this title (relating to Contracting for Community Care Services);
 - (B) Chapter 69 of this title (relating to Contracted Services); and
 - (C) the provider agency's plan of operation.
- (2) Maintain records of compliance with the requirements of this chapter.
- (3) Maintain financial records:
 - (A) to support billings to DHS for payment under §58.137 of this chapter (relating to What must the provider agency do to get paid by DHS?);
 - (B) to document reimbursements made by DHS. The documentation must include:
 - (i) amount of reimbursement;
 - (ii) voucher number;
 - (iii) warrant number;
 - (iv) date of receipt; and
 - (v) any other information necessary to trace deposits of reimbursements and payments made from the reimbursements in the provider agency's accounting system; and
 - (C) in accordance with generally accepted accounting principles (GAAP) and DHS procedures. A provider agency's financial records must include:
 - (i) deposit slips, bank statements, cancelled checks, and receipts;
 - (ii) purchase orders;
 - (iii) invoices;
 - (iv) journals and ledgers;
 - (v) timesheets, payroll, and tax records;
 - (vi) Internal Revenue Service, Department of Labor, and other government records and forms;
 - (vii) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);
 - (viii) equipment inventory records;
 - (ix) records of the provider agency's internal accounting procedures;
 - (x) chart of accounts, as defined by GAAP; and
 - (xi) records of company policies.
- (4) Maintain invoices, contracts, and service delivery records of all subcontractors. Maintaining all records to support claims is the responsibility of the prime contractor.

§58.133. What are the service delivery documentation requirements for the SSPD Program? The provider agency must maintain service delivery documentation that contains:

- (1) the name of the person delivering the services;
- (2) the client's name;
- (3) the client's Medicaid number;
- (4) the specific coverage period, including month, day, and year, as applicable;
- (5) the tasks assigned;
- (6) the units of service delivered;

- (7) the dates of service delivery; and
- (8) certification that the documented services were delivered.

§58.135. How do persons delivering services certify that they delivered the documented services?

- (a) For electronic service delivery documentation systems, each person delivering services inputs a unique identifier to certify the services delivered.
- (b) For paper service delivery documentation systems, each person delivering services signs the timesheet to certify the services delivered.
 - (1) The person must sign his or her name or a mark representing his or her name on the timesheet to certify that it is correct. Initials are not an acceptable substitute for a signature.
 - (2) A person delivering the services who is unable to sign the timesheet may designate another person to sign the timesheet. The provider agency must maintain written documentation of the:
 - (A) reason the person delivering the services is unable to sign the timesheet; and
 - (B) identity of the person authorized to sign the timesheet on behalf of the person delivering the services.

§58.137. What must the provider agency do to get paid by DHS?

- (a) The provider agency must provide services as required in its contract, comply with all requirements in this subchapter and in its contract, and comply with the following requirements to receive reimbursement:
 - (1) Bill for services provided as described in §49.9 of this title (relating to Billings and Claims Payment).
 - (2) Agree to accept the unit rate DHS authorizes.
 - (3) Maintain the documentation for reimbursement required in this chapter.
 - (4) Document services as required by the agency's plan of operation described in §58.23 of this chapter (relating to What must the provider agency's plan of operation include?).
 - (5) Bill for services provided as required by the agency's plan of operation described in §58.23 of this chapter.
- (b) Provider agencies that do not meet these requirements will not be paid or will be required to reimburse DHS for incorrect payments in accordance with §49.9 of this title.